No. 00-9769-CSY Title: Desarie Overton, Petitioner
v.
Ohio

Docketed: May 4, 2001 Court: Court of Appeals of Ohio, Lucas County

Entry	Date	Proceedings and Orders
	Apr 24 2001	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due June 3, 2001)
	Jun 4 2001	Brief of respondent Ohio in opposition filed.
	Jun 21 2001	DISTRIBUTED for Conference of September 24, 2001
	Oct 1 2001	REDISTRIBUTED for Conference of October 5, 2001
	Oct 9 2001	REDISTRIBUTED for Conference of October 12, 2001
	Oct 15 2001	Petition DENIED. Statement by Justice Breyer respecting the denial of the petition for a writ of certiorari with whom Justice Stevens, Justice O'Connor, and Justice Souter join. (Detached opinion.)

****

ORIGINAL (2)

No. 00-9769

Supreme Court, U.S.
FILED
APR 24 2001
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2000

DESARIE OVERTON,

Petitioner,

vs.

THE STATE OF OHIO,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Petitioner, Desarie Overton, asks leave to file the attached Petition for a Writ of Certiorari, without prepayment of costs and to proceed in forma pauperis. Petitioner has been granted leave so to proceed in the courts of the State of Ohio. Petitioner's Affidavit in Support of Motion to Proceed in Forma Pauperis is attached to this motion.

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ORIGINAL

No. 00-9769

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2000

DESARIE OVERTON,

Petitioner,

vs.

THE STATE OF OHIO,

Respondent.

On Petition for Writ of Certiorari To
The Supreme Court of Ohio

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

When evidence is obtained solely due to the execution of an arrest warrant which, in violation of Giordenello v. United, 367 U.S. 480 (1958), issued without any basis on which a probable cause determination could have been made, must the evidence be suppressed?

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No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2000

DESARIE OVERTON,

Petitioner,

vs.

THE STATE OF OHIO,

Respondent.

On Petition for Writ of Certiorari To
The Supreme Court of Ohio

PETITION FOR WRIT OF CERTIORARI

Desarie Overton, awaiting execution of her sentence in the Court of Common Pleas of Lucas County, Ohio, petitions for a writ of certiorari to issue to review the judgment of the Court of Appeals of Lucas County, Ohio entered in this case on September 1, 2000 and which the Supreme Court of Ohio declined to review on January 24, 2001.

OPINIONS BELOW

Petitioner Overton was convicted of cocaine possession in

the Court of Common Pleas of Lucas County, Ohio.

On appeal, the Court of Appeals of Lucas County, Ohio, affirmed Ms. Overton's conviction. The opinion is not reported. State v. Overton, Slip Op. No. L-99-1317 (Sep. 1, 2000)(reproduced at Appendix, A-1).

On January 24, 2001, the Supreme Court of Ohio dismissed Ms. Overton's appeal as not raising any substantial constitutional question. State v. Overton, 91 Ohio St.3d 1415, 741 N.E.2d 142 (2001) (reproduced at Appendix A-9). No petition for rehearing was filed.

JURISDICTION

The decision of the Supreme Court of Ohio dismissing Ms. Overton's appeal for want of a substantial constitutional question was entered on January 24, 2001. State v. Overton, 91 Ohio St.3d 1415, 741 N.E.2d 142. No petition for rehearing was filed. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257 because the Courts of Ohio have denied petitioner rights, privileges and immunities granted her under the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the right to be free from unlawful search and seizure as protected by the Fourth Amendment to the Constitution of the United States and made applicable to the states through the Fourteenth Amendment (both reproduced at Appendix A-11).

STATEMENT OF THE CASE

On November 23, 1998, Toledo Police Detective Daniel Navarre, along with officers of the Directed Patrol Unit, went to 721 Oakwood, Toledo, Lucas County, Ohio, the residence of petitioner Desarie Overton, in order to execute an arrest warrant upon her. Ms. Overton came downstairs to the entry door, refused to permit the officers to enter, and went back upstairs. Navarre then kicked in the door, ran upstairs after her, and pushed open the upstairs door as she was trying to close it.

Navarre testified that, as Ms. Overton fell on the couch, she threw a rolled up bill which landed on the floor spilling out what he recognized as crack cocaine.

The record from the trial court reveals that the arrest warrant was issued based exclusively on a criminal complaint the body of which states, in its entirety:

> Complainant being duly sworn states that Desarie Overton defendant at Toledo, Lucas County, Ohio on or about July 10, 1998 did violate □TMC (or) □ORC # 2925.13 constituting a charge of Permitting Drug Abuse in that the defendant, being the owner, lessee, or occupant of certain premises did knowingly permit such premises to be used for the commission of a felony drug abuse offense, to- wit: Desarie Overton being the lessee, owner, or occupant of 620 Belmont, Toledo, Ohio 43607 knowingly permitted Cocaine, a Schedule Two controlled substance to be sold and possessed by the occupants, there, both being in violation of the Ohio Revised Code, a felony drug abuse offense. This offense occurred in Toledo, Lucas County, Ohio

(The complaint is reproduced at Appendix A-10.)

The grand jury returned an indictment charging Ms. Overton with a single count of possession of cocaine. On April 12, 1999, Ms. Overton filed a motion to suppress. On April 30, 1999, a hearing was held on that motion. Post-hearing briefs were filed; the record was supplemented; and on June 10, 1999, the trial court denied the motion without written opinion. On June 16, 1999, Ms. Overton filed a motion to reconsider. On July 22, 1999 that motion, too, was denied, a bench trial was held, and Ms. Overton was found guilty.

On August 31, 1999, Ms. Overton was sentenced to three years of community control.

On timely appeal to the Court of Appeals of Lucas County, Ohio, Ms. Overton raised two assignments of error:

> Assignment of Error No. 1:
> THE TRIAL COURT ERRED AS A MATTER OF LAW AND TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT DENIED HER MOTION TO SUPPRESS.
>
> Assignment of Error No. 2:
> SHOULD THIS COURT DETERMINE THAT TRIAL COUNSEL FAILED ADEQUATELY TO RAISE THE ISSUE OF WHETHER THE WARRANT WAS ISSUED UPON AN ADEQUATE SHOWING OF PROBABLE CAUSE, COUNSEL WILL HAVE PROVIDED CONSTITUTIONALLY INEFFECTIVE ASSISTANCE OF COUNSEL.

In a Decision and Judgment Entry, and over dissent by one member of the three-judge panel, the court of appeals affirmed the judgment of the trial court. The decision has not been reported. State v. Overton, Slip Op. No. L-99-1317 (Sept. 1, 2000).

Timely notice of appeal was filed with the Supreme Court of

Ohio where Ms. Overton raised the following as her sole proposition of law:

> An arrest warrant which issues without a basis on which a probable cause determination could have been made is void and cannot be relied upon in good faith, and any evidence derived from the execution of the warrant must be suppressed.

The Supreme Court of Ohio, with one dissent, dismissed the appeal sua sponte as not raising any substantial constitutional question. 91 Ohio St.3d 1415, 741 N.E.2d 142.

HOW FEDERAL QUESTIONS WERE RAISED BELOW

Violations of Ms. Overton's rights under the Fourth and Fourteenth Amendments to the United States Constitution were raised by motion to suppress in the Court of Common Pleas of Lucas County, Ohio. They were pursued on direct appeal to the Court of Appeals of Lucas County, Ohio (which purportedly addressed them in its Decision and Judgment Entry, Appendix at A-1), and further pursued by discretionary appeal (dismissed sua sponte) to the Supreme Court of Ohio.

REASONS FOR GRANTING THE WRIT

> Question Presented: When evidence is obtained solely due to the execution of an arrest warrant which, in violation of Giordenello v. United, 367 U.S. 480 (1958), issued without any basis on which a probable cause determination could have been made, must the evidence be suppressed?

On November 23, 1999, police, acting without her permission, forcibly entered the apartment where Desarie Overton was staying. Ostensibly, their purpose was to execute an arrest warrant upon

her. The criminal complaint on which the warrant was issued, and which was sworn out in the Toledo Municipal Court, is a part of the record. Defendant's Exhibit A, Suppression Hearing, 4/30/99 (Appendix at A-10).

Testimony by Detective Navarre at the suppression hearing revealed that the warrant was based on a complaint sworn not before a judge but before a deputy clerk. Detective Navarre testified that criminal complaints in Toledo Municipal Court are routinely issued just that way. No judge passes on the merits of the complaints or determines probable cause.

A rubber-stamped notation on the complaint indicates that a warrant was issued, perhaps on August 7, 1999. Navarre testified that a warrant will issue upon a criminal complaint in Toledo Municipal Court if the officer swearing the complaint asks that a warrant be issued.

The complaint is a form within a form. That is, the complaint is a printed form with certain blanks filled in identifying a criminal charge, in this case, permitting drug abuse in violation of Ohio Rev. Code Ann. § 2925.13. Further, certain items are filled in on a different typewriter than others. The body of the complaint states in its entirety:

> Complainant being duly sworn states that Desarie Overton defendant at Toledo, Lucas County, Ohio on or about July 10, 1998 did violate ☐TMC (or) ☐ORC # 2925.13 constituting a charge of Permitting Drug Abuse in that the defendant, being the owner, lessee, or occupant of certain premises did knowingly permit such premises to be used for the commission of a felony drug abuse

> offense, to- wit: Desarie Overton being the lessee, owner, or occupant of 620 Belmont, Toledo, Ohio 43607 knowingly permitted Cocaine, a Schedule Two controlled substance to be sold and possessed by the occupants, there, both being in violation of the Ohio Revised Code, a felony drug abuse offense. This offense occurred in Toledo, Lucas County, Ohio

The complaint itself reveals nothing about how the officer swearing to the complaint came into possession of the information. Indeed, it contains no specific information about the offense itself, other than date, place, defendant, and charge. And the charge tracks the alternative language of the Ohio Revised Code rather than specifically identifying what the defendant allegedly did.

Insofar as the complaint served as a basis for issuing a warrant, then, it is woefully inadequate. But it was the sole basis for issuing that warrant.

The Fourth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 (1961), provides in part that "no Warrants shall issue, but upon probable cause." In Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371 (1980), this Court held that, at least absent exigent circumstances, the Fourth Amendment requires that a nonconsensual entry into a residence to effect a felony arrest requires a warrant founded on probable cause. As discussed above, the clerk who issued the warrant in this case did not have probable cause to do so.

This Court resolved the precise issue in this case more than forty years ago. Writing for the majority in Giordenello v. United States, 357 U.S. 480, 78 S.Ct. 1245 (1958), Justice Harlan recognized that, "The language of the Fourth Amendment, that '* * * no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing * * * the persons or things to be seized * * *,' of course applies to arrest as well as search warrants." Id. at 485-486, 78 S.Ct. At 1249-1250. He explained:

> . . . The purpose of the complaint, then, is to enable the appropriate magistrate, here a Commissioner, to determine whether the 'probable cause' required to support a warrant exists. The Commissioner must judge for himself the persuasiveness of the facts relied on by a complaining officer to show probable cause. He should not accept without question the complainant's mere conclusion that the person whose arrest is sought has committed a crime.
> When the complaint in this case is judged with these considerations in mind, it is clear that it does not pass muster because it does not provide any basis for the Commissioner's determination under Rule 4 that probable cause existed. The complaint contains no affirmative allegation that the affiant spoke with personal knowledge of the matters contained therein; it does not indicate any sources for the complainant's belief; and it does not set forth any other sufficient basis upon which a finding of probable cause could be made. We think these deficiencies could not be cured by the Commissioner's reliance upon a presumption that the complaint was made on the personal knowledge of the complaining officer. . . .

Id. at 486, 78 S.Ct. At 1250.

In this case, as Judge Sherck recognized in dissent in the

Court of Appeals, "the clerk was without any basis to independently evaluate the propriety of issuing this arrest warrant." State v. Overton, Slip Op. At 8 (Sherck, J., dissenting) (Appendix at 8).

Thus, and because there was no probable cause for the arrest warrant, police had no lawful basis to enter Ms. Overton's home without her consent.

But if police could not lawfully enter her home, they also could not lawfully have found the crack cocaine in her home. Thus, both the trial court and the court of appeals were wrong, and the fruit of the illegal entry should have been suppressed.

The substantive issue in this case is whether a police officer's word that a person has committed a crime is sufficient to support the issuance of an arrest warrant. The answer, of course, is that it is not. This Court has said that it is not. See, e.g., Payton and Giordenello, both supra.

The trial court and court of appeals essentially ignored all of that.

Were that all, were this case only about what happened to Desarie Overton, it would be important because it would serve to remind the courts of Ohio that the decisions of this Court count, a lesson which Ohio's courts seem to need constantly to be reminded. See Ohio v. Reiner, 532 U.S. ___, 121 S.Ct. 1252 (2001). The constitutionally established judicial structure under which we operate is controlling, and state courts are bound to follow the law even if they take no pleasure in doing so. The

Supreme Court of Ohio clearly enunciated the principle in State v. Storch, 66 Ohio St.3d 280, 291, 612 N.E.2d 305, 313 (1993): "We know that, as a lesser appellate court for purposes of federal questions, we ignore the words of the United States Supreme Court at our peril." It obviously was not enough.[1]

But that is not all, and this case has a larger significance. For the record of this case reveals that the unconstitutional practice which should have resulted in suppression of the evidence against Desarie Overton is not the exception but is the norm in the City of Toledo. The record reveals that arrest warrants are issued at the Toledo Municipal Court not on a finding of probable cause but simply on the request of police officers. And the record demonstrates that, at least some of the time, that request is not accompanied by information which might be sufficient to support a finding of probable cause.

The short of it is that some substantial number of persons in and around Toledo are, apparently, being arrested in violation of their constitutional rights. The practice must be virtually routine.

---

[1]Though it provides a basis for this Court to grant certiorari pursuant to Rule 10(b), Rules of the Supreme Court of the United States.

CONCLUSION

For the reasons addressed above, the petition for certiorari should be granted.

Respectfully submitted,

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FILED
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COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE COURT OF APPEALS OF LUCAS COUNTY

State of Ohio — Court of Appeals No. L-99-1317

Appellee — Trial Court No. CR-99-1312

v.

Desarie Overton — **DECISION AND JUDGMENT ENTRY**

Appellant — Decided: SEP 0 1 2000

* * * * *

Julia R. Bates, prosecuting attorney,
and Louis E. Kountouris, for appellee.

Jeffrey M. Gamso, for appellant.

* * * * *

GLASSER, J. This matter is before the court on appeal from the Lucas County Court of Common Pleas.

On February 24, 1999, appellant, Desarie Overton, was indicted on one count of cocaine possession, a violation of R.C. 2925.11(A) and a felony of the fifth degree. On April 12, 1999, appellant filed a motion to suppress arguing that her arrest was the result of an illegal search. A suppression hearing commenced on April 30, 1999.

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Toledo Police Detective Daniel Navarre testified that on November 23, 1998, he had a warrant for the arrest of appellant on a charge of permitting drug abuse. In the early morning hours, Detective Navarre and other officers went to appellant's residence to serve the arrest warrant. Detective Navarre testified that he knocked on the door and watched through a glass window while appellant, whom he recognized from previous encounters, came down the stairs. Appellant did not open the door. Detective Navarre told her he had a warrant for her arrest. Navarre testified that appellant looked at him and signaled him to leave. Navarre then kicked the door in while appellant ran upstairs. Navarre chased appellant as she ran into a room. Navarre testified that appellant attempted to close a door to the room but he was able to push it open. Navarre testified that he watched as appellant fell on a couch and threw a rolled up twenty dollar bill into the air. When the bill landed, pieces of crack cocaine fell out of it. Navarre then arrested appellant on the warrant. She was later indicted for the cocaine.

On cross-examination, Navarre testified that the reason he attempted to arrest appellant on November 23, 1998, for a warrant that was issued in August of 1998, was because he believed that appellant had been threatening witnesses in an unrelated murder case.

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Appellant's motion to suppress was denied. Following a bench trial she was convicted of cocaine possession and sentenced to three years of community control including a thirty day jail sentence. Appellant now appeals setting forth the following assignments of error:

> "I. THE TRIAL COURT ERRED AS A MATTER OF LAW AND TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT DENIED HER MOTION TO SUPPRESS.
>
> "II. SHOULD THIS COURT DETERMINE THAT TRIAL COUNSEL FAILED ADEQUATELY TO RAISE THE ISSUE OF WHETHER THE WARRANT WAS ISSUED UPON AN ADEQUATE SHOWING OF PROBABLE CAUSE, COUNSEL WILL HAVE PROVIDED CONSTITUTIONALLY INEFFECTIVE ASSISTANCE OF COUNSEL."

In her first assignment of error, appellant contends the court erred in denying her motion to suppress.

When reviewing a trial court's ruling on a motion to suppress, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. State v. Guysinger (1993), 86 Ohio App.3d 592. An appellate court must independently determine, without deferring to the trial court's conclusions, whether as a matter of law the facts meet the applicable standard. State v. Klein (1991), 73 Ohio App.3d 486, 488.

Appellant contends that the arrest warrant was not based on probable cause. Therefore, Detective Navarre unlawfully entered appellant's apartment and unlawfully arrested her for cocaine possession.

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A complaint is a written statement of the essential facts constituting the offense charged. It shall also state the numerical designation of the applicable statute or ordinance. "It shall be made upon oath before any person authorized by law to administer oaths." Crim.R. 3. Crim.R. 4 states in pertinent part:

> "If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed, and that the defendant has committed it, a warrant for the arrest of the defendant, or a summons in lieu of a warrant, shall be issued by a judge, magistrate, clerk of court, or officer of the court designated by the judge, to any law enforcement officer authorized by law to execute or serve it.
>
> "The finding of probable cause may be based upon hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual basis for the information furnished."

"Probable cause is a fluid concept -- turning on the assessment of probabilities in particular factual contexts -- not readily, or even usefully, reduced to a neat set of legal rules." Illinois v. Gates (1983), 462 U.S. 213, 232, 76 L.Ed.2d 527, 103 S.Ct. 2317. Probable cause to arrest depends "upon whether, at the moment the arrest was made . . . the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [suspect] had committed or was

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committing an offense." Beck v. Ohio (1964) 379 U.S. 89, 91, 13 L.Ed.2d 142, 85 S.Ct. 223, citations omitted.

The arrest warrant for appellant was based on a charge of permitting drug abuse, a violation of R.C. 2925.13(B). The elements of the crime are as follows:

> "No person who is the owner, lessee, or occupant, or who has custody, control, or supervision, of premises or real estate, including vacant land, shall knowingly permit the premises or real estate, including vacant land, to be used for the commission of a felony drug abuse offense by another person."

The complaint in support of the arrest warrant in this case read as follows:

> "Complainant being duly sworn states that Desarie Overton defendant at Toledo, Lucas County, Ohio on or about July 10, 1998 did violate ORC# 2925.13 constituting a charge of permitting drug abuse in that the defendant, being the owner, lessee, or occupant of certain premises, did knowingly permit such premises to be used for the commission of a felony drug abuse offense, to wit: Desarie Overton being the lessee, owner, or occupant of 620 Belmont, Toledo, Ohio 43607 knowingly permitted Cocaine, a schedule two controlled substance to be sold and possessed by the occupants, there, both being in violation of the Ohio Revised code, a felony drug abuse offense. This offense occurred in Toledo, Lucas County, Ohio."

The complaint was signed by Detective Andre Woodson and was certified by T.A. Hearst, a Toledo Municipal Court Clerk.

The complaint in this case listed a specific code section and contained specific factual information sworn to by a fellow Toledo Police Detective. The complaint was certified by a

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clerk of court pursuant to Crim.R. 4. Detective Navarre testified that because he already knew appellant, he recognized her when she came to the door. Based on the foregoing we conclude that Detective Navarre had reasonable ground to believe that the offense was committed and reasonable ground to believe that the person alleged to have committed the offense is guilty of the violation. Therefore, the Court finds that Detective Navarre had probable cause to arrest appellant in this case. Appellant's first assignment of error is found not well taken.

Given our disposition of appellant's first assignment of error, appellant's second assignment of error is found not well-taken.

On consideration whereof, the court finds that appellant was not prejudiced or prevented from having a fair trial, and the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

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Peter M. Handwork, J. JUDGE

George M. Glasser, J. JUDGE
CONCUR.

James R. Sherck, J., dissents.

Judge George M. Glasser, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

SHERCK, J., dissenting. I respectfully dissent. Warrants satisfactory to meet the requirements of the Fourth Amendment must be obtained from a neutral and detached judge, magistrate, clerk, or other officer of the court who shall assess the evidence presented and determine whether there is probable cause that such warrant should issue. Shadwick v. City of Tampa (1972), 407 U.S. 345, 350; Warden v. Hayden (1967), 387 U.S. 294, 301-302. Since it is the independent official who is charged with making this determination, it has long been held that a mere recitation of the statutory elements of the crime is not sufficient to support a finding that probable cause exists. Giordenello v. United States (1958), 357 U.S. 480, 485; see,

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also, State v. Sharp (1996), 109 Ohio App.3d 757, 760; State v. Zinkiewicz (1990), 67 Ohio App.3d 99, 108; State v. Daniels (1981), 2 Ohio App.3d 328, 329, overruled on other grounds by State v. Bean (1983), 13 Ohio App.3d 69.

In this matter, the only document before the deputy clerk who issued the arrest warrant was a complaint which does no more than recite the statutory elements of R.C. 2925.13(B). The officer making the complaint does not aver that he observed the illegal activity or by whom he was informed of such illegal activity. In my view, without this information the clerk was without any basis to independently evaluate the propriety of issuing this arrest warrant.

Absent a proper warrant, Detective Navarre had no authority to enter appellant's apartment and anything discovered there should have been suppressed. Accordingly, I would reverse her conviction.

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DISMISSALS, SUA SPONTE, NO SUBSTANTIAL CONSTITUTIONAL QUESTION AND DISCRETIONARY APPEALS, IF APPLICABLE, NOT ALLOWED

00-1525. State v. Hoffman. Huron App. No. H-99-035. Resnick, J., not participating.

00-1782. Sharp v. Brennan. Erie App. No. E-00-008.

00-1784. Independence v. Porter. Cuyahoga App. No. 76534.

00-1786. State v. Briscoe. Cuyahoga App. No. 76125.

00-1803. State v. Jenkins. Vinton App. No. 99CA506. Moyer, C.J., and Douglas, J., dissent.

00-1807. State v. Mallick. Lorain App. No. 99CA007281.

00-1808. Rust v. Harris-Gordon. Lucas App. No. L-99-1287. Resnick, J., not participating.

00-1811. State v. Benson. Butler App. No. CA99-11-194. Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

00-1815. Bryant v. Allstate Ins. Co. Lorain App. No. 00CA007606.

00-1818. State v. Ashley. Hamilton App. Nos. C-000084, C-000096 and C-000098.

00-1838. State v. Hawkins. Hamilton App. No. C-990807.

00-1851. State v. Booker. Hamilton App. No. C-000177.

00-1852. State v. Zwiebel. Franklin App. No. 00AP-61.

00-1855. Nelson v. Marymount Hosp. Cuyahoga App. No. 76398.

00-1857. Meek v. Nova Steel Processing. Miami App. No. 2000CA1.

00-1884. Buoscio v. Mahoning Cty. Dept. of Human Serv. Mahoning App. No. 00CA121.

00-1885. State v. Miller. Ross App. Nos. 00CA2539 and 99CA2506.

00-1886. State v. Martin. Cuyahoga App. No. 77015.

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00-1887. State ex rel. O'Connor v. Davis. Summit App. No. 19553. Moyer, C.J., Resnick and Lundberg Stratton, JJ., dissent.

00-1888. State v. Overton. Lucas App. No. L-00-1317. Cook, J., dissents.

00-1895. In re Lisa Marie C. Lucas App. No. L-00-1126.

00-1916. State v. Dunbarger. Medina App. No. 3024-M. On discretionary appeal and on motion to withdraw as counsel by Mary R. Kovak. Appeal and motion denied. Resnick, J., would grant the motion to withdraw.

00-1948. Smith v. Bistro Mgt., Inc. Hamilton App. No. C-000079.

00-1951. Bohanan v. Old Republic Title Agency of Columbus, Inc. Franklin App. No. 00AP-644. On discretionary appeal and on motion to strike memorandum in support of jurisdiction. Appeal and motion denied.

00-1952. Blair v. Hunter. Lucas App. No. L-00-1015. Resnick, J., not participating.

00-1957. State v. Wellbaum. Champaign App. No. 2000CA8.

00-1958. State v. Owens. Wood App. No. WD-00-004.

00-1978. STA Realty Inc., Trustee v. Specialty Restaurants Corp. Cuyahoga App. No. 76729. F.E. Sweney, J., dissents.

00-1979. State v. Waldron. Ashtabula App. No. 99-A-0081. Pfeifer and Lundberg Stratton, JJ., dissent.

00-1981. State v. Moore. Franklin App. No. 00AP-64.

00-1982. State v. Boyd. Putnam App. No. 12500001.

00-1983. Broadview Hts. v. Baron. Cuyahoga App. No. 76490.

00-1884. State v. Agner. Allen App. No. 1200007.

00-1886. State v. Walker. Hamilton App. No. C-990503.

00-1890. State Emp. Relations Bd. v. Fairland Local School Dist. Bd. of Edn. Lawrence App. No. 00CA10. Resnick, J., dissents.

00-1892. State v. Lee. Cuyahoga App. No. 77010.

AUG - 7 1998

8082

Case No. _____

STATE OF OHIO / CITY OF TOLEDO

vs.

Desarie Overton

Name

2742 Glenwood

Address

Toledo, Ohio 43610

City State Zip

☐ TMC ☐ ORC R.B. No. 049906A98

Code No. 2925.13

Charge: Permittin. Drug Abuse

Classification: M-1

THE TOLEDO MUNICIPAL COURT
TOLEDO, LUCAS COUNTY, OHIO

Warrant To Issue

COMPLAINT WARRANT ISSUED

(Crim. R. 3 and 4)

Rac B Sex F Hgt 5'02" Wgt 160

Hai Blk Eye Bro DOB 04-18-60

Soc 299-64-4714 Pkt _____

RID 03726666

BCI _____ FBI _____

Alias _____

Complainant being duly sworn states that Desarie Overton defendant at Toledo, Lucas County, Ohio on or about July 10, 19 98 did violate ☐ TMC (or) ☒ ORC # 2925.13 constituting a charge of Permittin. Drug Abuse in that the defendant, being the owner, lessee, or occupant of certain premises did knowingly permit such premises to be used for the commission of a felony drug abuse offense, to-wit: Desarie Overton being the lessee, owner, or occupant of 620 Belmont, Toledo, Ohio 43607 knowingly permitted Cocaine, a Schedule II controller substance to be sold and offered for sale by the occupants, there both being in violation of the Ohio Revised Code, a felony drug abuse offense. This offense occurred in Toledo, Lucas County, Ohio

Sworn to and subscribed before me by Det Andr Woodson #1939 Signature

on 8-2-1998.

Det. A. Woodson #1939
Complainant's Name

525 N. Erie St.
Address

CERTIFICATE
I certify that this is a true copy of the original writ and of the endorsement thereon.

Judge / Clerk / Deputy Clerk
The Toledo Municipal Court

A-10

BEST AVAILABLE COPY

Fourth Amendment, United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall isue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fourteenth Amendment, United States Constitution

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

A-11

ORIGINAL

Supreme Court, U.S.
FILED
JUN 4 2001
CLERK

No. 00-9769

IN THE SUPREME COURT OF THE UNITES STATES

October Term, 2000

DESARIE OVERTON,

Petitioner,

vs.

THE STATE OF OHIO,

Respondent.

On Petition For A Writ of Certiorari
To The Supreme Court of Ohio

BRIEF IN OPPOSITION

JULIA R. BATES, PROSECUTING ATTORNEY
LUCAS COUNTY, OHIO

By: Brenda J. Majdalani, Counsel of Record
Eric A. Baum
Assistant Prosecuting Attorneys
Lucas County Courthouse
Toledo, Ohio 43624
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ON BEHALF OF RESPONDENT

16 pp

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United States Supreme Court Rule 15.3 1

United States Supreme Court Rule 33.2 1

Respondent, the State of Ohio, respectfully submits this Brief in Opposition to the Petition for Certiorari of Petitioner, Desarie Overton. Respondent files this Brief under Rules 15.3 and 33.2 of this Court.

STATEMENT OF THE CASE

Respondent adopts the facts and procedural history as set forth in the opinion of the court of appeals. *State v. Overton*, Sixth District of Ohio court of appeals, Slip. Op. L-99-1317 (Sept. 1, 2000) (App. 1-8).

REASONS FOR DENYING THE WRIT

Although petitioner presents this case as one of paramount constitutional significance, Ohio's Sixth District Court of Appeals, truth be told, did nothing more than make a straightforward finding that an arrest warrant was supported by probable cause to believe that an offense occurred. The Ohio Supreme Court implicitly agreed, summarily finding that the matter did not raise any "substantial constitutional question." *State v. Overton*, 91 Ohio St.3d 1415, 741 N.E.2d 142 (2001).

The court of appeals did nothing more than apply well-established law to an otherwise-ordinary case. As even petitioner herself points out, the governing rule of law was set forth decades ago by this Court. But because she disagrees with the appellate court's application of this well-settled rule of law in this particular case, she now seeks this Court's involvement. And knowing that this Court will issue a certiorari writ only in cases of broad societal importance, petitioner has peppered her petition with frequent references to the Fourth Amendment, search warrants, and probable cause, all in an

alarmist effort to convince this Court that the appellate court's "holding" marks a dangerous break with precedent that must be corrected by this tribunal.

When the tumult subsides, however, it will become clear that the appellate court issued no "ruling" at all. Instead, it merely made a routine finding that an arrest warrant was supported by probable cause. No startling rule of law was announced, no eye-popping doctrine was enunciated, and no astonishing declaration was set forth. Accordingly, the court of appeals's opinion, as the Ohio Supreme Court summarily found, is not the slightest bit remarkable and need not be revisited -- must less, disturbed -- by this Court.

I.

THE QUESTION PETITIONER PRESENTS WAS REVIEWED -- AND RESOLVED -- BY THIS COURT OVER FORTY YEARS AGO.

Petitioner claims that several wrongs were thrust upon her. First, she complains that the police "forcibly entered" her apartment "without her permission." Pet. At 5. Next, she resents the fact that the complaint on which the arrest warrant was based was sworn before a deputy clerk rather than a judge.[1] Pet. at 6. She then laments that the complaint is "a form within a form." Pet. at 6. Finally, she alleges that the complaint, rather than being premised on allegations of the officer's personal knowledge of the facts surrounding the underlying offense, is instead based on the officer's mere conclusion that she had committed a crime. Pet. at 9. Accordingly, under petitioner's theory, there was no probable cause to issue the arrest warrant.

[1]Municipal-court clerks, however, qualify as neutral and detached magistrates and, accordingly, may issue arrest warrants. *Chadwick v. Tampa*, 407 U.S. 345 (1972).

At the end of the day, however, it is only this last allegation that has any bearing on this case. Petitioner herself so states: "The substantive issue in this case is whether a police officer's word that a person has committed a crime is sufficient to support the issuance of an arrest warrant." Pet. at 9.

Petitioner contends that an officer's mere word that a person has committed a crime does not support the issuance of an arrest warrant. As petitioner also acknowledges, however, "this Court resolved this precise issue more than forty years ago." Pet. at 8, citing *Giordenello v. United States*, 357 U.S. 480 (1958). In *Giordenello*, this Court ruled that a magistrate, when reviewing an affidavit for probable cause, "should not accept without question the officer's mere conclusion that the person whose arrest is sought has committed a crime." *Id.* at 485. Accordingly, there is no controversy for this tribunal to resolve.

II.

THE APPELLATE COURT ISSUED NO STARTLING RULE OF LAW COMPELLING THIS COURT'S REVIEW.

Petitioner concedes that the governing rule of law was decided long ago in *Giordenello*. But she disagrees with the court of appeals's application of this rule. She also disagrees with the Ohio Supreme Court's decision not to review her case and, in her effort to discredit that august institution, points out that one of its recent cases was summarily reversed by this tribunal. *Ohio v. Reiner*, 532 U.S. ----, 121 S.Ct. 1252, 149 L.Ed.2d 158 (2001).

The Ohio Supreme Court's holding in *Reiner*, flawed as it is, does not compel this Court to review this case. In *Reiner*, the Ohio Supreme Court, for perhaps the first

time in the history of jurisprudence, expressly ruled that the Fifth Amendment privilege against self-incrimination does not apply to witnesses who maintain their innocence: "There is no need for a grant of immunity where the witness denies all culpability." *State v. Reiner*, 89 Ohio St.3d 342, 354, 731 N.E.2d 662, 674 (2000). This Court summarily reversed this unprecedented holding:

> We have held that the privilege's protection extends only to witnesses who have 'reasonable cause to apprehend danger from a direct answer.' ... But we have never held, as the Supreme Court of Ohio did, that the privilege is unavailable to those who claim innocence. To the contrary, we have emphasized that on of the Fifth Amendment's 'basic functions. . . is to protect innocent men . . . "who otherwise might be ensnared by ambiguous circumstances."'

Ohio v. Reiner, U.S. at -----, 121 S.Ct. at 1254, 149 L.Ed.2d at 162 (citations omitted) (ellipses added in part).

Here, in contrast, the court of appeals issued no such startling rule of law. Rather, it merely applied well-settled Fourth Amendment law and made an everyday probable-cause determination. Such routine determinations are "decided on a case-by-case basis." *United States v. Nevitt*, 409 F.Supp. 1075, 1080 (W.D. Mich. 1976). See, also, *Illinois v. Gates*, 462 U.S. 213, 262 (1983), describing probable cause as a "fluid concept -- turning on the assessment of probabilities in particular factual contexts." And the Ohio Supreme Court, although also a target of petitioner's ill words, merely passed on the opportunity to review petitioner's case. This case, therefore, is hardly remarkable and, accordingly, need not be reviewed by this Court.

III.

PETITIONER'S EXCLUSIVE REMEDY IS AN ACTION UNDER 42 U.S.C. SEC. 1983.

In an effort to demonstrate that her allegations represent rampant abuses committed by the Toledo Police Department, petitioner claims that the alleged defects in her warrant are "the norm in the City of Toledo" because "arrest warrants are issued at the Toledo Municipal Court not on a finding of probable cause but simply on the request of police officers." Pet. at 10. Petitioner concludes by speculating that "[t]he practice must be virtually routine." *Id.*

There is no evidence in the record, however, to support these sweeping allegations. To the contrary, one would think that if Toledo police officers were able to obtain arrest warrants for the mere asking, as petitioner apparently suggests, the constitutional questions that petitioner now presents would have been presented -- and resolved -- years ago. Lacking evidence to substantiate this claim of widespread abuse, petitioner's only remaining course of action is to file a claim under 42 U.S.C. Sec. 1983,[2] pursue discovery, and prove her claims in either a state or federal trial court.

---

[2]42 U.S.C. Sec. 1983 provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory relief was unavailable.

IV.

THE WARRANT IS SUPPORTED BY PROBABLE CAUSE.

In any event, this case involves more than a police officer's mere word that petitioner committed a crime. As petitioner points out, the Fourth Amendment to the United States Constitution provides that no warrant shall issue but upon probable cause. See, generally, *Payton v. New York*, 445 U.S. 573 (1980).

As the appellate court found, Detective Andre Woodson swore out an affidavit to the Clerk of Court in which he specifically stated the criminal activity in question, listed the date of the offense, identified the contraband at issue, identified the applicable Ohio Revised Code section, set forth the exact address where the violation occurred, properly listed the venue by stressing that the offense occurred in Toledo, Lucas County, Ohio, and, of course, named petitioner not only as the defendant but also specifically identified her as an owner, lessee, or occupant of the property. Finally, the complaint was certified by a Toledo Municipal Court clerk, and an arrest warrant, in turn, was issued.

Accordingly, the complaint complied with Fed. R. Crim. P. 3 and 4.[3] First, Rule 3 requires the complaint to state "the essential facts constituting the offense charged." Second, Rule 4(A), in relevant part, requires the complaint to present probable cause to believe that an offense has been committed:

> If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the request of the attorney for the government a summons instead of a warrant shall issue.

[3]Rules 3 and 4 "must be read in light of . . . the Fourth Amendment." *Giordenello*, 357 U.S. at 485.

A defendant has "a heavy burden" when challenging a search-warrant affidavit. *United States v. Bennett*, 905 F.2d 931, 934 (6th Cir. 1990). Warrants are "issued on the basis of nontechnical, common-sense judgments of laymen applying a standard less demanding than those used in more formal legal proceedings." *Illinois v. Gates*, 462 U.S. 213, 235-236. Accordingly, a strong presumption of validity arises from their issuance, see, *e.g., United States v. Williams*, 385 F.Supp. 1400, 1403 (E.D. Mich. 1974), and a magistrate's probable-cause determination "should be paid great deference by reviewing courts," *Gates* at 236 (citation omitted). A stricter appellate review standard would subvert the Fourth Amendment's "strong preference for searches conducted pursuant to a warrant." *Gates* at 236. Warrants, therefore, are to be reviewed in a "commonsense" manner, not a "hypertechnical" one. *Id.* (citation omitted).

Petitioner claims that the complaint is insufficient because it is based on a mere recital of Ohio Rev. Code Section 2925.13(B)'s elements. She relies largely on *United States v. Giordenello*, 367 U.S. 480, in support of this claim. The *Giordenello* complaint was ruled invalid because it, indeed, presented only a recitation of the underlying criminal offense:

> The undersigned complainant [Finley] being duly sworn states: that on or about January 26, 1956, at Houston, Texas in the Southern District of Texas, Vito Giordenello did receive, conceal, etc., narcotic drugs, to-wit: heroin hydrochloride with knowledge of unlawful importation; in violation of Section 174, Title 21, United States Code.
>
> And the complainant further states that he believes that -- are material witnesses in relation to this charge.

357 U.S. at 481 (brackets *sic*).

In other words, the *Giordenello* complaint neither listed any sources, asserted that the officer had any personal knowledge of the matter, presented any facts, nor, most significantly, "set forth any other sufficient basis upon which a finding of probable cause could be made." *Id.* at 486. Here, in contrast, the complaint is not bare bones. Rather, it sets forth specific facts, to wit: (1) the exact location of the crime, *i.e.*, that it occurred at "630 Belmont, Toledo, Ohio 43607," (2) the specific fact that petitioner owned, leased, or occupied these premises, (3) the date of the offense, (4) the venue, and, finally, (5) the specific contraband in question, *i.e.*, "cocaine," rather than merely "a felony drug offense," as provided in Ohio Rev. Code Sec. 2925.13(B). Because the term "cocaine" appears nowhere in Ohio Rev. Code Sec. 2925.13, the affidavit, by definition, does not present a bare-bones recitation of the Ohio Rev. Code Sec. 2925.13's language. Consequently, the warrant does "set forth * * * sufficient basis upon which a finding of probable cause could be made"[4] and, thus, comports with the Fourth Amendment to the United States Constitution and Fed. R. Crim. P. 3 and 4.

[4]*Giordenello*, 357 U.S. at 486.

CONCLUSION

For the foregoing reasons, the writ should not issue.

Respectfully submitted,

JULIA R. BATES, PROSECUTING ATTORNEY
LUCAS COUNTY, OHIO

By: _____
Brenda J. Majdalani, Counsel of Record

By: _____
Eric A. Baum
Assistant Prosecuting Attorneys

No. 00-9769

IN THE SUPREME COURT OF THE UNITES STATES

October Term, 2000

DESARIE OVERTON,

Petitioner,

vs.

THE STATE OF OHIO,

Respondent.

On Petition For A Writ of Certiorari
To The Supreme Court of Ohio

PROOF OF SERVICE

This is to acknowledge that Jeffrey M. Gamso, attorney for petitioner, has been served with a copy of Respondent's Brief in Opposition, under Rules 29.3 and 29.5(b) of this Court, by ordinary U.S. Mail, this fourth day of June, 2001. Service was sent to Jeffrey M. Gamso, Esq., 1119 Adams, 2nd Floor, Toledo, Ohio 43624, (419) 243-3800.

JULIA R. BATES, PROSECUTING ATTORNEY
LUCAS COUNTY, OHIO

By: Brenda J. Majdalani

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TELEPHONE (419) 213-4700 / FACSIMILE (419) 213-4595

June 4, 2001

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543

Re: *Desarie Overton v. State of Ohio*
U.S. Supreme Court No. 00-9769

Dear Clerk:

Enclosed please find the original and ten (10) copies of the State of Ohio's (Respondent) Brief in Opposition to Petitioner's Petition for Writ of Certiorari, with regard to the above-captioned case.

Would you kindly file same. Thank you.

Sincerely,

Eric A. Baum, #0052534
Assistant Prosecuting Attorney

EAB/dg
Enclosures

RECEIVED
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OFFICE OE THE CLERK
SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

DESARIE OVERTON *v.* OHIO

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF OHIO, LUCAS COUNTY

No. 00–9769. Decided October 15, 2001

The petition for a writ of certiorari is denied

Statement of JUSTICE BREYER, with whom JUSTICE STEVENS, JUSTICE O'CONNOR and JUSTICE SOUTER join, respecting the denial of the petition for writ of certiorari.

An Ohio court convicted Desarie Overton of a drug crime. She sought to suppress key evidence—the drugs—on the ground that the police, when seizing the drugs, were acting pursuant to an arrest warrant that "was not based on probable cause." No. L 99–1317, 2000 WL 1232422, *2 (Ohio App. Lucas County, Sept. 1, 2000). The Ohio Court of Appeals rejected Overton's claim, and the Supreme Court of Ohio dismissed her appeal. She now seeks certiorari. She says that the Toledo police simply inserted her name and address into a previously prepared "form complaint" or affidavit which contained a general description of the crime; and that they submitted this "form complaint" to the Magistrate as the sole evidence supporting the issuance of the warrant. She argues that the warrant therefore failed to meet minimal constitutional standards. I agree with Overton and would summarily reverse the judgment below on the ground that the warrant is clearly inadequate under well-established Supreme Court case law.

The Fourth Amendment provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U. S. Const., Amdt. 4. The probable-cause determination must

be made by a neutral magistrate in order "to insure that the deliberate, impartial judgment of a judicial officer will be interposed between the citizen and the police, to assess the weight and credibility of the information which the complaining officer adduces as probable cause." *Wong Sun* v. *United States*, 371 U. S. 471, 481–482 (1963).

As far as the record before us reveals, the only evidence in this case offered to the Magistrate to show "probable cause" for issuing the warrant consisted of a "complaint" presented to the Magistrate, signed by Detective Andre Woodson. That complaint sets forth Overton's name, the date of the offense, the name of the offense ("permitting drug abuse"), and the statutory reference. It further reads:

> "[T]he defendant, being the owner, lessee, or occupant of certain premises, did knowingly permit such premises to be used for the commission of a felony drug abuse offense, to-wit: **Desarie Overton** being the lessee, owner, or occupant of **620 Belmont, Toledo, Ohio 43607**, knowingly permitted Cocaine, a Schedule Two controlled substance to be sold and possessed by the occupants, there, both being in violation of the Ohio Revised Code, a felony drug abuse offense. This offense occurred in Toledo, Lucas County, Ohio." Appendix, *infra*.

This "complaint" sets forth the relevant crime in general terms, it refers to Overton, and it says she committed the crime. But nowhere does it indicate *how Detective Woodson knows, or why he believes, that Overton committed the crime.*

This Court has previously made clear that affidavits or complaints of this kind do not provide sufficient support for the issuance of an arrest warrant. In *Giordenello* v. *United States*, 357 U. S. 480, 486 (1958), which involved a federal prosecution, the Court found that a complaint

identical in all material respects to the one before us failed to meet the "probable cause" requirement contained in Rule 4 of the Federal Rules of Criminal Procedure because it contained "no affirmative allegation that the affiant spoke with personal knowledge of the matters contained therein," failed to "indicate any sources for the complainant's belief," and neglected to "set forth any other sufficient basis upon which a finding of probable cause could be made." For those reasons, the Magistrate could not "assess independently the probability that the petitioner committed the crime charged." 357 U. S., at 487.

Subsequently, in *Aguilar* v. *Texas*, 378 U. S. 108, 112, n. 3 (1964) (abrogated on other grounds by *Illinois* v. *Gates*, 462 U. S. 213, 230 (1983)), which involved a state prosecution, the Court noted that *Giordenello* had construed Rule 4's "probable cause" requirement " 'in light of the constitutional' requirement of probable cause which that Rule implements." And it added that the "principles announced in *Giordenello* derived, therefore, from the Fourth Amendment, and not from our supervisory power." *Ibid.*

Then, in *Whiteley* v. *Warden, Wyo. State Penitentiary*, 401 U. S. 560 (1971), which also involved a state prosecution, the Court again considered a complaint similar to the one before us. That complaint said:

> "I, C.W. Ogburn, do solemnly swear that on or about the 23 day of November, A. D. 1964, in the County of Carbon and State of Wyoming, the said Harold Whiteley and Jack Daley, defendants did then and there unlawfully break and enter a locked and sealed building [describing the location and ownership of the building]." *Id.*, at 563 (alteration in original) (internal quotation marks omitted).

The Court, citing *Giordenello* and *Aguilar*, wrote that the

> "decisions of this Court *concerning Fourth Amendment probable-cause requirements* before a warrant for either arrest or search can issue require that the judicial officer issuing such a warrant be supplied with sufficient information to support an independent judgment that probable cause exists for the warrant." *Id.*, at 564 (emphasis added).

The Court added:

> "In the instant case—so far as the record stipulated to by the parties reveals—the sole support for the arrest warrant issued at Sheriff Ogburn's request was the complaint reproduced above. That complaint consists of nothing more than the complainant's conclusion that the individuals named therein perpetrated the offense described in the complaint." *Id.*, at 564–565 (footnotes omitted).

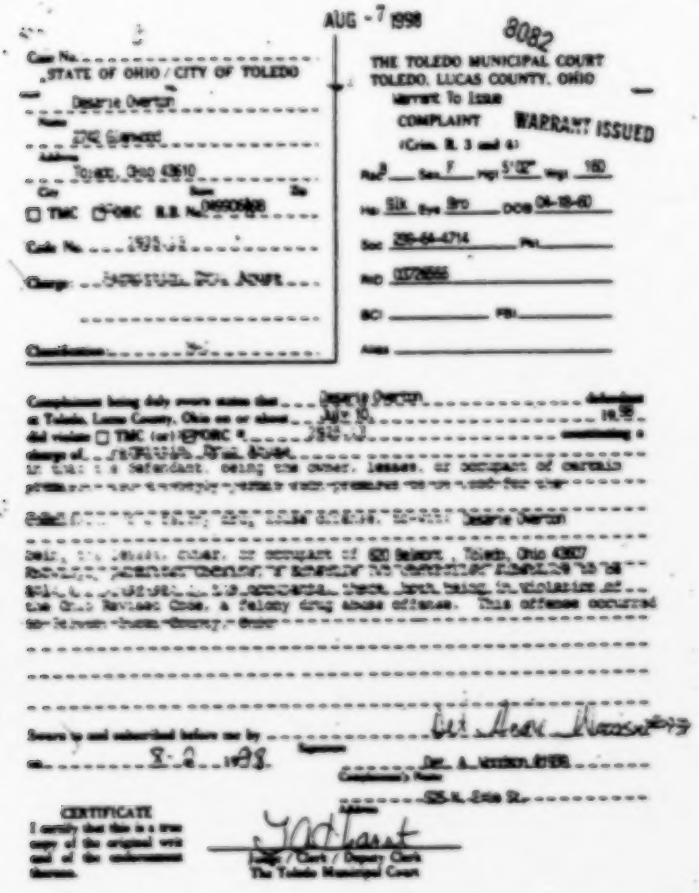
The Court went on to conclude that "the complaint on which the warrant issued here clearly could not support a finding of probable cause by the issuing magistrate." *Id.* at 568.

I can find no relevant difference between the complaint before us and the one at issue in *Whiteley*. And *Whiteley* is clearly controlling on this point. *Arizona* v. *Evans*, 514 U. S. 1, 13 (1995) (casting doubt on *Whiteley*'s exclusionary rule discussion but stating that "*Whiteley* clearly retains relevance in determining whether police officers have violated the Fourth Amendment . . ."). Nor can I find any basis, on the papers before us, to conclude that the evidence was admissible *despite* the inadequacy of the arrest warrant.

I consequently conclude that the city of Toledo clearly violated the Fourth Amendment warrant requirement. Because the Court already has answered directly the basic legal question presented in this case, I would not grant certiorari for the purpose of hearing that question argued

once again. I would, however, summarily reverse the decision below. I realize that we cannot act as a court of simple error correction and that the unpublished intermediate court decision below lacks significant value as precedent. Nonetheless, the matter has a general aspect. The highlighted print on the complaint, see Appendix, *infra*, offers some support for Overton's claims that the "complaint" is a form that the police filled in with her name and address. And that fact, if true, helps to support her claim that her case is not unique. That possibility, along with the clarity of the constitutional error, convinces me that the appropriate disposition of this case is a summary reversal.

APPENDIX TO STATEMENT OF BREYER, J.



AUG - 7 1998

8082

THE TOLEDO MUNICIPAL COURT
TOLEDO, LUCAS COUNTY, OHIO

COMPLAINT WARRANT ISSUED

STATE OF OHIO / CITY OF TOLEDO

Desarie Overton

Toledo, Ohio 43610

☐ TMC ☐ OMC

Desarie Overton

Toledo, Ohio 43607

Desarie Overton

Desarie Overton

Dec. A. [illegible]

525 N. State St.

Deputy / Clerk / Deputy Clerk
The Toledo Municipal Court

BEST AVAILABLE